



May 12, 2008

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## MEMORANDUM FOR TAS HEADQUARTERS STAFF AND DIRECTORS

FROM: Nina E. Olson /s/  
National Taxpayer Advocate

SUBJECT: Interim Guidance Memoranda: E-FOIA Procedures

The transparency of government operations is generally required by law and IRS policy, and is also an essential component of good government. Wide dissemination of new procedures and guidance issued by government officials helps to ensure that government employees and the public know which procedures and guidance are the most current. It also helps to assure the public that the government is administering the laws consistently and fairly. Moreover, the government can benefit from the public feedback that transparency generates.

In accordance with IRS policy, the Internal Revenue Manual (IRM), which is electronically available to the public, is supposed to serve as the official source of all IRS "instructions to staff." See IRM 1.11.2.1. As you know, however, it is sometimes necessary for IRS business units to issue "interim guidance" (IG) memorandum to staff between IRM updates. The guidance contained in an IG memorandum is valid for up to one year. By the expiration date, the IG should be incorporated into the public IRM. In the interim, however, certain IG must be made available to the public pursuant to the Freedom of Information Act (FOIA), as amended by the 1996 Electronic Freedom of Information Act (E-FOIA) amendments.

Subsection (a)(2) of the FOIA (5 U.S.C. § 552, as amended) requires agencies to make certain categories of records available for public inspection and copying. For any record listed in FOIA subsections (a)(2)(A) - (E) created by the IRS on or after November 1, 1996, the FOIA now requires that it be made available electronically. In accordance

with E-FOIA and IRS policy, TAS will make electronically available to the public any interim guidance (*i.e.*, instructions to staff) that:

- Will affect taxpayers;
- Will be in effect for more than three months; and
- Contains non-sensitive information (*i.e.*, excludes documents containing only Official Use Only (OUO) information).

However, TAS will not make such guidance available to the public:

- If the disclosure could reasonably be expected to permit the circumvention of the law by members of the public; or
- If the guidance relates to internal administrative matters and procedures, such as timekeeping, personnel, TRAS, etc.

Interim guidance memoranda that will be made available to the public must be processed through the Internal Management Document (IMD) Coordinator for number assignment, tracking, and web access on both the TAS intranet and the TAS Internet site on IRS.gov.

The attached memorandum provides instructions to originating offices for preparing, routing, issuing, and obsoleting IG memoranda. The attached memorandum also incorporates existing guidelines for submitting documents to TAS C & L for distribution through TAS websites and newsletters, and for ensuring that all such documents comply with Section 508 of the Rehabilitation Act.

All of the requirements contained in the attached memorandum will be incorporated into IRM 1.11.13, Internal Management Documents System, Taxpayer Advocate Service (TAS) Internal Management Document Program. These new procedures will ensure that TAS is as transparent as the FOIA, IRS policy, and good government demand.

The National Taxpayer Advocate highlighted the “Transparency of the IRS” as one of the IRS’s Most Serious Problems in her 2006 Annual Report to Congress because transparency is important. The IRS is so vast that its employees are less likely to follow the correct procedures if they are not widely distributed among employees and the public. Undisclosed guidance or procedures may also provide unfair advantage to taxpayers who have somehow learned of them. Further, when the IRS publishes new interim guidance, it may receive helpful feedback that it can use to improve its procedures. Because these principles apply equally to guidance issued by TAS, the National Taxpayer Advocate intends for TAS to be a model in this area.

Attachment

Attachment



## Interim Guidance Memoranda: E-FOIA Procedures

Interim Guidance (IG) memoranda are used when it is critical to quickly communicate changes to IRM procedures or to provide information to support a one-time modification in a program or process. They contain a specific expiration date not to exceed one year from date signed. These memoranda are considered official documents but do not automatically replace the IRM. All IG memoranda that impact the IRM must be incorporated into the IRM as soon as feasible and in no event later than the expiration date. For the servicewide procedures regarding Internal Management Documents (IMDs), see IRM 1.11.1.

### When to Issue

An interim guidance memorandum may be issued when it is necessary to quickly provide official directions or instructions to staff. This would include communicating a change to procedures that are already in the IRM or providing a temporary procedure required to support a one-time occurrence of a program or process. All instructions to staff that may affect taxpayers should first be issued via signed memo, in accordance with the IG procedures, rather than by informal communication vehicles such as email, newsletters, or training materials. If it is unclear whether the guidance affects taxpayers, an IG memorandum should be issued.

An IG memorandum is valid for up to one year from the date signed and does not automatically replace information in an IRM. By the expiration date, the guidance must be incorporated into the IRM or the information is no longer valid and the memorandum will expire. Therefore, it is imperative that the author take the necessary steps to incorporate the IG memorandum into the IRM within the one-year period if the procedures are to remain in effect.

If the interim guidance cannot be incorporated into the IRM within the one-year period, but the instructions need to remain in effect, another IG memorandum may be issued. The practice of reissuing an expired IG memorandum should be rare. To reissue an IG memorandum, the author must provide written justification as part of the clearance package, include the expired memo as background, and provide a copy of the justification to the IMD Coordinator when requesting a control number. The author must also obtain approval from the National Taxpayer Advocate.

### Obsolete Interim Guidance

IG memoranda automatically expire one year from the issue date. However, if an IG memorandum becomes obsolete before the one year date, the memorandum author or his or her business unit should notify the IMD Coordinator that the memo is obsolete and should be removed from IRS.gov. Obsolescence can occur due to several factors such as the following:

- The IRM has been updated with the new procedures and the memorandum is no longer needed; or
- Procedures have changed and the guidance is invalid or superseded.

It is the responsibility of the author, the originating business unit, and the IMD Coordinator to ensure that expired memos are timely removed from IRS.gov. After notifying the IMD Coordinator that the memo has expired, the author or originator should prepare a Content Publishing Request (CPR) and Communications Assistance Request (CAR), (see “How to Issue,” below) to remove the expired memorandum. Also see the **Interim Guidance (IG) Memoranda Process Table** under “Monitoring,” steps 7 through 10, for additional information.

## **E-FOIA and Other Disclosure Considerations**

The Freedom of Information Act (FOIA), as amended by the 1996 Electronic Freedom of Information Act (E-FOIA) amendments requires “instructions to staff that affect a member of the public” to be electronically available to the public unless one of nine exemptions under FOIA section 552(b) or three special law enforcement exclusions under FOIA section 552(c) applies. Two exemptions frequently apply to “instructions to staff” matters:

- The disclosure could reasonably be expected to permit circumvention of the law by members of the public.
- The guidance relates to predominantly internal matters, such as timekeeping, personnel, travel (TRAS), etc.

IRS policy further requires that all instructions to staff contained in job aids, desk guides, web sites, documents, or any other sources be incorporated into the IRM, which is available to IRS employees and to the public (unless it is official use only). See IRM 1.11.2.1. In accordance with E-FOIA and IRS policy, unless one of the exemptions or exclusions (described above) applies, TAS will make electronically available to the public any interim guidance (*i.e.*, instructions to staff) that:

- Will affect taxpayers;
- Will be in effect for more than three months; and
- Contains non-sensitive information (*i.e.*, excludes documents containing only Official Use Only (OUO) information).

For example, if guidance submitted for publication in CAPER is inconsistent with the IRM or addresses an issue that is not addressed in the IRM, then the guidance needs to

be incorporated into an IG memorandum and promptly forwarded for approval using the TAS document clearance form.

The IMD Coordinator will assist the author in identifying IG memoranda that are required to be made public. The IMD Coordinator will seek technical assistance when necessary, but uncertainty will generally be resolved in favor of disclosure. Moreover, these procedures must not be used to justify a delay in issuing guidance. TAS can meet its employees' needs for timely guidance even as it fulfills taxpayers' needs for information about TAS procedures.

## **How to Issue**

IG memoranda that will be made available to the public must be processed through Internal Management Document (IMD) Coordinators for number assignment, tracking, and web access. IRM 1.11.13, Internal Management Documents System, Taxpayer Advocate Service (TAS) Internal Management Document Program, provides guidance for the management of all TAS IMDs. The originating office is responsible for following the steps below:

1. Contact your IMD Coordinator for assistance and guidance in preparing, routing/clearing, and obtaining a control number for the memo. The TAS IMD Coordinator is responsible for providing the control number, which is a required element in the upper right-hand corner of the IG memorandum, along with an expiration date and the identification of any impacted IRMs.
2. Prepare the memorandum and procedures using the template in Exhibit 1 ensuring that all the required elements are included. If you do not want to publish phone numbers or contact information, include the contact information in a transmittal document rather than the IG memorandum.
3. Ensure that the IG memorandum and any attachments or associated materials are 508 compliant. This means no scanned PDF documents. Microsoft Word documents are acceptable as long as they are properly structured -- try to avoid tables or other visual elements that would require alternative text.
4. Prepare the Content Publishing Request (CPR), and Communications Assistance Request (CAR).
5. Determine what business units should review and sign off on the memo and prepare the TAS Document Clearance Record, to reflect those reviewers. Use the TAS Internal Document Clearance Form. This will serve as a control, routing and official record of the review and clearance. The originating office is responsible for routing and clearing the memo. The reviewers should generally include the TAS IMD Coordinator and TAS C&L, to give notice that the memo is in process and will need to be distributed to the affected employees and the public.

**NOTE:** Procedures impacting working conditions or job duties of bargaining unit employees must be reviewed by Workforce Relations, procedures that implicate IRS policy or legal issues must be reviewed by the Office of Chief Counsel, and procedures that contain Official Use Only material must be reviewed by the Office of Government Liaison and Disclosure. See IRM 1.11.2.7.1.

6. Route the IG memorandum and any attachments, along with the Form 2061 (see step 5 above), the CPR and the CAR.
7. Once the IG memorandum is signed and approved, forward the package (memo and attachments, Form 2061, the CAR and the CPR) electronically to the IMD Coordinator for approval and verification that it contains all necessary components (control number, expiration date, impacted IRM, contact point, etc.) and for recordkeeping.
8. Submit the IMD Coordinator approved memo package to the IG Coordinator in TAS C&L for appropriate distribution. The IG Coordinator will also verify that the memo has a control number and expiration date, that the CAR and CPR are approved, and that the CPR contains an abstract, prepared by the originator. The IG Coordinator will enter the static file number on the CPR, accept any tracked changes, convert the Word document to a 508 compliant PDF, and post it to IRS.gov. Then, the IG Coordinator will forward the CPR, the PDF, the IRS.gov filename and the Static File Number to the designated SPDER staff member (SPDER Content Management Application (CMA) Liaison). The SPDER CMA Liaison will update the TAS E-FOIA assembly page with the document title and the abstract, and link the document to the previously loaded static file.
9. TAS C&L will distribute the signed IG memorandum electronically to all employees who need the information to perform their jobs and post a signed copy to the TAS website. All TAS IG memoranda can be accessed through the internal website at <http://tasnew.web.irs.gov/index.asp?pid=2510>.

## Monitoring

The TAS IMD Coordinator will monitor IG memoranda and solicit assistance from authors or content owners to ensure the information is incorporated into the IRM timely.

## Interim Guidance (IG) Memoranda Process Table

| STEP | RESPONSIBLE PARTY        | ACTION   |
|------|--------------------------|--|
| 1.   | Initiator/Author/Analyst | 1. Prepare draft memo (must be 508 compliant)<br>2. Coordinate with IMD coordinator to |

| STEP | RESPONSIBLE PARTY               | ACTION  |
|------|---------------------------------|---|
|      |                                 | <p>identify it as interim guidance (IG)</p> <p>3. Request a control number from the IMD Coordinator by providing the Coordinator the following:</p> <ul style="list-style-type: none"> <li>• a copy of the draft memo,</li> <li>• a tentative issuance date,</li> <li>• the identified impacted IRMs, if applicable, and</li> <li>• a point of contact for the memo, including symbols and phone number.</li> </ul> |
| 2.   | <b>IMD Coordinator/Designee</b> | <ol style="list-style-type: none"> <li>1. Assign a control number</li> <li>2. Evaluate IG memorandum for E-FOIA criteria</li> <li>3. Coordinate with initiator</li> <li>4. Explain the one-year rule and the need to monitor the memo for expiration.</li> <li>5. Ask initiator/author/analyst to notify Coordinator when the IG is obsoleted through IRM update or a changed process.</li> </ol>                   |
| 3.   | <b>Initiator/Author/Analyst</b> | <ol style="list-style-type: none"> <li>1. Prepare the IG in accordance with E-FOIA guidelines</li> <li>2. Prepare CAR and CPR, including abstract for insertion on CPR</li> <li>3. Route/clear IG package, including attachments, CAR and CPR, using Form 2061</li> <li>4. Forward the signed IG package electronically to IMD Coordinator.</li> </ol>  |
| 4.   | <b>IMD Coordinator/Designee</b> | <ol style="list-style-type: none"> <li>1. Review the IG package for compliance with E-FOIA guidelines and proper clearance approvals</li> <li>2. Forward the IG package to the IG Coordinator for posting on the TAS intranet and <a href="http://www.IRS.gov">www.IRS.gov</a>.</li> </ol>  |
| 5.   | <b>IG Coordinator/Designee</b>  | <ol style="list-style-type: none"> <li>1. Review the CPR, CAR and IG to ensure that all information required for posting is provided</li> <li>2. Convert the memo to a 508 compliant PDF file after accepting any tracked</li> </ol>  |

| STEP | RESPONSIBLE PARTY                        | ACTION   |
|------|--|--|
|      |  | <p>changes</p> <ol style="list-style-type: none"> <li>3. Use the IRS.gov Content Management Application (CMA) to upload the static file to the TAS E-FOIA folder, input the subject line, abstract (long description) and expiration date, upload the static file, and annotate the Static File ID# on the CPR</li> <li>4. E-mail the completed CPR, CAR, PDF and Word documents to appropriate C&amp;L staff for loading of IG to TAS Intranet</li> <li>5. E-mail the completed CPR and PDF to the designated SPDER staff.</li> </ol> |
| 6.   | SPDER Staff                              | <ol style="list-style-type: none"> <li>1. Link the IG memo to the "Instructions to Staff" section of the Electronic Reading room site on <a href="http://www.IRS.gov">www.IRS.gov</a></li> <li>2. Send confirmation to initiator and the IG Coordinator that the memo is posted to the site.</li> </ol>  |
| 7.   | IRM Author                               | <ol style="list-style-type: none"> <li>1. Create/update IRM in accordance with established procedure, not to exceed one year</li> <li>2. Notify the IMD coordinator when the IG is no longer needed.</li> </ol>  |
| 8.   | Initiator/Author/Analyst/IMD Coordinator | <ol style="list-style-type: none"> <li>1. Ensure IRM has been updated</li> <li>2. Ensure expired memos are removed from IRS.gov (Expired memos are those that are either incorporated into an IRM or post-expiration date)</li> <li>3. Prepare the CPR and CAR and obtain approval</li> <li>4. Forward CPR and CAR requesting removal of expired documents to IG Coordinator.</li> </ol>   |
| 9.   | IG Coordinator                           | <ol style="list-style-type: none"> <li>1. Forward CPR and CAR to TAS C&amp;L requesting removal of IG from IRS.gov and the TAS intranet.</li> </ol>  |
| 10.  | SPDER                                    | <ol style="list-style-type: none"> <li>1. Send confirmation to initiator and the IG Coordinator that the IG has been</li> </ol>  |



| STEP | RESPONSIBLE PARTY | ACTION  |
|------|-------------------|---|
|      |                   | removed from <a href="http://www.IRS.gov">www.IRS.gov</a> . |

#### INTERIM GUIDANCE PROCESS CONTACT LISTING

| Title                      | Name                | Phone        | Fax          | Email  |
|----------------------------|---------------------|--------------|--------------|--|
| IMD Coordinator            | Dianne Y. Henderson | 251-341-5991 | 251-341-5906 | <a href="mailto:Dianne.Henderson@IRS.gov">Dianne.Henderson@IRS.gov</a> |
| Back-up to IMD Coordinator | Marjorie Via        | 904-665-1037 | 904-665-1802 | <a href="mailto:Marjorie.H.Via@IRS.gov">Marjorie.H.Via@IRS.gov</a>     |
| IG Coordinator             | Donaldo Smith       | 312-655-4211 | 312-655-4236 | <a href="mailto:Donaldo.Smith@IRS.gov">Donaldo.Smith@IRS.gov</a>       |
| Back-up to IG Coordinator  | Dave Swan           | 404-338-8694 | 404-338-8691 | <a href="mailto:David.Swan@IRS.gov">David.Swan@IRS.gov</a>             |

## EXHIBIT 1

### Procedural Memo Template

Control No: [TAS-13\*-MMYY-NNN]  
(to be assigned by IMD Coordinator; \*Impacted IRM Part number)  
Expires:  
(a maximum of one year from date of memo)  
Impacted IRM(s):  
(IRM(s) that will be revised to include this material)

MEMORANDUM FOR [ ]

FROM: [NTA, DNTA EDCA, EDSA, or their Designee]

SUBJECT: Interim Guidance on [ ]

The purpose of this memo is to issue interim guidance required for [insert appropriate subject or program.] Please ensure that this information is distributed to all affected employees within your organization.

**Source(s) of Authority:** [include applicable tax law, regulation, Treasury Directive, Commissioner memorandum, etc.]

**Effect on Other Documents:** This guidance will be incorporated into IRM [insert appropriate cite] by [insert date not to exceed one year from the date of this memo.]

**Contact:** [Include name and phone number of author or subject matter expert. Reminder: Contact information will become **public**. If you do not want this information public, please **include on separate transmittal**.]